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*Attorneys for Richland Holdings, Inc.**d/b/a AcctCorp of Southern Nevada**and Clifford Molin, M.D. aka Zeeba**Sleep Center***UNITED STATES DISTRICT COURT****DISTRICT OF NEVADA**

MICHAEL CUTTS,

Plaintiff,

vs.

RICHLAND HOLDINGS, INC. d/b/a  
ACCTCORP OF SOUTHERN NEVADA, a  
Nevada Corporation; CALEB J.  
LANGSDALE, ESQ. dba THE  
LANGSDALE LAW FIRM, P.C.; and  
CLIFFORD MOLIN, M.D. aka ZEEBA  
SLEEP CENTER

Defendants.

Case Number: 2:17-cv-01525-JCM-PAL

**DEFENDANTS RICHLAND  
HOLDINGS, INC. d/b/a ACCTCORP OF  
SOUTHERN NEVADA AND CLIFFORD  
MOLIN, M.D. AKA ZEEBA SLEEP  
CENTER'S REPLY IN SUPPORT OF  
MOTION FOR ATTORNEY FEES**

Defendants Richland Holdings, Inc., d/b/a AcctCorp of Southern Nevada and Clifford Molin, M.D. aka Zeeba Sleep Center (collectively, "Defendants"), by and through their attorneys of record, the law firm of Marquis Aurbach Coffing, and pursuant to 28 U.S.C. § 1927, 15 U.S.C. § 1692k(a)(3), Nev. Rev. Stat. § 18.010, and this Court's inherent

power, hereby file their Reply in Support of Motion for Attorney Fees (“Reply”).<sup>1</sup> This Reply is based upon the following Memorandum of Points and Authorities, all pleadings and papers on file herein, and any oral argument allowed by this Court at the time of hearing on this matter.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff Michael Cutts’ (“Plaintiff”) opposition [ECF No. 46] wholly fails to address, respond to, or dispute, in argument or with evidence, the legal or factual bases Defendants advanced in their motion for attorney fees [ECF No. 39] in support of an award of fees. Instead, Plaintiff argues that (1) Defendants purportedly did not comply with LR 54-14(c) in using a declaration in support of the motion, instead of an affidavit; and (2) his action was not “unreasonable, frivolous, meritless, or vexatious” under the legal standard cited in *Vernon v. City of Los Angeles*, 27 F. F.3d 1385 (9th Cir. 1994), for prevailing defendants in civil and constitutional rights cases, which is inapplicable to this case. Neither argument can provide a basis for denial of Defendants’ motion for attorney fees.

Two important points remain once this Court dispels with these baseless contentions. The arguments and evidence put forward in Defendants’ motion for attorney fees remain entirely undisputed. And this Court recently granted a very similar motion for attorney fees, based on very similar facts (which are arguably stronger here), involving the same counsel and similar parties, in *Geraldo v. Richland Holdings, Inc.*, No. 2:17-CV-15 JCM (PAL), 2018 WL 1567847 (D. Nev. Mar. 30, 2018). The Court should follow the lead it set in that case and likewise award Defendants attorney fees in this case.

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<sup>1</sup> Plaintiff also improperly filed an alternative motion to stay execution of judgment on attorney fees, together with his opposition, in violation of the local rules. ECF No. 45; LR IC 2-2(b). Defendants’ time to oppose the alternative motion to stay has not expired and Defendants will oppose that motion in a separate opposition in the normal course of their opposition time.

1 **II. LEGAL ARGUMENT**

2 **A. DEFENDANTS' ARGUMENTS AND EVIDENCE IN SUPPORT OF**  
 3 **AN AWARD OF ATTORNEY FEES REMAIN UNDISPUTED.**

4 A point worthy of emphasis in this reply is the fact that Plaintiff completely failed to  
 5 address, respond to, or dispute, in argument or with evidence, the legal or factual bases  
 6 Defendants advanced in their motion for attorney fees [ECF No. 39] in support of an award  
 7 of fees. ECF No. 46. Thus, Defendants' arguments and evidence in support of an award of  
 8 attorney fees remain undisputed. Plaintiff likewise failed to contest or dispute the  
 9 reasonableness of the fees sought. As such, Plaintiff has conceded these points and the  
 10 Court is left with nothing but the undisputed arguments and evidence put forward in  
 11 Defendants' motion for attorney fees [ECF No. 39].

12 **B. THE COURT SHOULD FOLLOW THE LEAD IT SET IN *GERALDO***  
 13 **AND LIKEWISE AWARD FEES IN THIS CASE.**

14 Recently, this Court granted a nearly identical motion for attorney fees, based on  
 15 nearly identical facts (which are arguably stronger here), involving the same counsel and  
 16 similar parties, in *Geraldo v. Richland Holdings, Inc.*, No. 2:17-CV-15 JCM (PAL), 2018  
 17 WL 1567847 (D. Nev. Mar. 30, 2018).

18 After addressing the facts, legal standards, and recent decisions by “[m]ultiple other  
 19 courts in this district [dismissing] claims brought by the same attorney against the same or  
 20 similar defendants[,]” the Court found that the “sheer number of procedural and substantive  
 21 defects with plaintiffs’ case, considered together with the holdings of other courts in similar  
 22 cases brought by the same counsel here and based on similar fact, demonstrates bad faith on  
 23 behalf of plaintiffs.” *Id.* at \*7. The court therefore held “that this suit was brought in bad  
 24 faith and for the purpose of harassment” and “award[ed] defendants attorney’s fees pursuant  
 25 to § 1692k.” *Id.*

26 The Court should adhere to its decision in *Geraldo* and likewise award Defendants  
 27 attorney fees in this case, given the identical nature of the motions for attorney fees, the  
 facts, counsel, and parties.

1           **C. THE USE OF A DECLARATION IN SUPPORT OF THE MOTION**  
 2           **FOR ATTORNEY FEES, INSTEAD OF AN AFFIDAVIT, HAD “LIKE**  
 3           **FORCE AND EFFECT” UNDER 28 U.S.C. § 1746 AND FULLY**  
 4           **COMPLIED WITH LR 54-14(c).**

5           Plaintiff argues that Defendants’ motion for attorney fees should be denied because  
 6 they purportedly did not comply with LR 54-14(c) in providing a declaration in support of  
 7 the motion, instead of an affidavit. ECF No. 46, at 3-4. Plaintiff’s contention is baseless.

8           28 U.S.C. § 1746 provides:

9                       Wherever, under any law of the United States or under any  
 10                      rule, regulation, order, or requirement made pursuant to law, *any*  
 11                      *matter is required or permitted to be supported, evidenced,*  
 12                      *established, or proved by the . . . affidavit,* in writing of the person  
 13                      making the same . . . , such matter *may, with like force and effect, be*  
 14                      *supported, evidenced, established, or proved by the unsworn*  
 15                      *declaration . . .* in writing of such person which is subscribed by him,  
 16                      as true under penalty of perjury, and dated, in substantially the [form  
 17                      identified in subsections (1)-(2).

18           (emphasis added)

19           Here, a declaration was used to support the motion for attorney fees, which complied  
 20 with 28 U.S.C. § 1746. ECF No. 39. Thus, the declaration had “like force and effect” as  
 21 would an affidavit supporting the motion. Consequently, Defendants’ motion for attorney  
 22 fees fully complied with LR 54-14(c) and the use of a declaration versus an affidavit cannot  
 23 provide a basis for denial of Defendants’ attorney fees.

24           **D. PLAINTIFF’S ARGUMENT AND RELIANCE RELATIVE TO**  
 25           **VERNON IS MISPLACED BECAUSE IT IS INAPPLICABLE TO**  
 26           **THIS CASE.**

27           Plaintiff’s contends that Defendants’ motion for attorney fees should be denied  
 because his action was not “unreasonable, frivolous, meritless, or vexatious.” ECF No. 46,  
 at 4-5. Plaintiff does not engage in any analysis or present any argument or evidence to  
 demonstrate that his case was *not* “unreasonable, frivolous, meritless, or vexatious.” *Id.*  
 Instead, he baldly claims that it was not and asserts that because this Court did not find it as  
 such in its order dismissing this case [ECF No. 30], Defendants are not entitled to attorney  
 fees under the standard set forth in *Vernon v. City of Los Angeles*, 27 F. F.3d 1385 (9th Cir.

1 1994). ECF No. 46, at 4-5. Plaintiff's contention and reliance on *Vernon* is incredibly  
 2 misplaced.

3 *Vernon* was a civil rights case, in which a retired assistant chief of police, sued  
 4 various defendants under 42 U.S.C. § 1983, alleging various federal and state constitutional  
 5 rights violations. 27 F.3d at 1388. In affirming the district court's determination that the  
 6 plaintiff's constitutional rights were not violated, the Ninth Circuit addressed "the  
 7 defendants' request for attorneys' fees pursuant to 42 U.S.C. § 1988." *Id.* at 1402. The  
 8 *Vernon* court evaluated this request under the legal standard applicable to "prevailing  
 9 defendant[s]" "in a civil rights action," which is "where the action is found to be  
 10 'unreasonable, frivolous, meritless, or vexatious.'" *Id.* quoting *Roberts v. Spalding*, 783  
 11 F.2d 867, 874 (9th Cir. 1986).

12 Here, Plaintiff brought this case alleging violations of the Fair Debt Collection  
 13 Practices Act ("FDCPA") and other state law claims, not civil and constitutional rights  
 14 violations under 42 U.S.C. § 1983 or any other applicable statute. ECF No. 1. Thus, the  
 15 standard for awarding attorney fees under 42 U.S.C. § 1988—if the action is found to be  
 16 unreasonable, frivolous, meritless, or vexatious—is entirely inapplicable to this case, as is  
 17 *Vernon*. Consequently, the Court should entirely disregard Plaintiff's argument on this  
 18 front, as well as the legal authorities and standards it rests on, and instead, look to the  
 19 applicable standards advanced by Defendants—28 U.S.C. § 1927, 15 U.S.C. § 1692k(a)(3),  
 20 Nev. Rev. Stat. § 18.010, and this Court's inherent power. In doing so, Defendants are  
 21 confident the Court will see that an award of fees is just.

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1 **III. CONCLUSION**

2 Defendants respectfully request that this Court enter an order, pursuant to 28 U.S.C.  
3 § 1927, 15 U.S.C. § 1692k(a)(3), NRS 18.010, and/or the Court's inherent power, awarding  
4 them with the attorney fees incurred in defending this frivolous and harassing lawsuit – in  
5 the amount of \$50,239.50.

6 Dated this 4th day of April, 2018.

7 MARQUIS AURBACH COFFING

8 By /s/ Chad F. Clement  
9 Terry A. Coffing, Esq.  
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16 *and Clifford Molin, M.D. aka Zeeba*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing DEFENDANTS RICHLAND HOLDINGS, INC. D/B/A ACCTCORP OF SOUTHERN NEVADA AND CLIFFORD MOLIN, M.D. AKA ZEEBA SLEEP CENTER'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 4th day of April, 2018.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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☐ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

N/A

and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Chad F. Clement  
an employee of Marquis Aurbach Coffing